

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF IOWA

VIRGIL D. MOORE,	)	
	)	
Plaintiff/Counterclaim Defendant,	)	
	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	Case no. 4:07-cv-00180-JAJ-TJS
	)	
Defendant/Counterclaimant,	)	
	)	
v.	)	
	)	
JOHN D. HARRIS,	)	
	)	
Counterclaim Defendant.	)	

**UNITED STATES' POST-TRIAL BRIEF CONCERNING  
THE SUFFICIENCY OF IRS FORM 2751 NOTICE UNDER  
INTERNAL REVENUE CODE SECTION 6672(b)**

In accordance with this Court's July 30, 2009 order, the United States submits the following with respect to the issue of whether the IRS Form 2751, which was voluntarily signed by Virgil Moore, is adequate notice under Internal Revenue Code ("I.R.C.") § 6672(b).

I.R.C. § 6672(b)(1) requires that the IRS personally deliver or mail to a taxpayer written notice of the IRS's intent to make a trust fund recovery penalty assessment under Section 6672. Notably, Section 6672 does not mandate a particular means for giving the notice but, instead, simply requires that the IRS personally deliver or mail a written notice to the taxpayer.

The IRS fashioned procedures for accomplishing notice under Section 6672, which are set forth in the IRS Internal Revenue Manual ("IRM") 5.4.7.4. These procedures authorize notice under Section 6672 through IRS Letter 1153 or IRS Form 2751. As this Court has already

ruled (Docket #81), delivery of IRS Form 2751 satisfies the notice requirements under the IRM governing § 6672(b) notice.

At trial, the jury found that Virgil Moore voluntarily signed the IRS Form 2751, without duress or coercion. In plain language, the Form 2751 set forth the quarters for which the IRS intended to assess trust fund recovery penalties against Virgil Moore, including the first quarter of 2003. The Form clearly says “I consent to the assessment and collection of the total penalty shown above.” As the evidence proved at trial, IRS Revenue Officer Rebecca Denning personally delivered the IRS Form 2751 to Virgil Moore at ITB on July 30, 2003. Moore read the form, signed and dated it, and then returned the form to Officer Denning without question or objection. But now, Moore claims (without authority) that he never received adequate Section 6672 notice of the IRS’s intent to assess the trust fund penalty against him for the first quarter of 2003. This argument must fail.

Given the above, the Court should find the IRS Form 2751 that Virgil Moore signed was, as a matter of law, adequate notice under I.R.C. § 6672(b). As noted above, Section 6672 does not proscribe a particular method by which the IRS must deliver or mail the notice to the taxpayer. Thus, the IRS satisfied this requirement when Officer Denning handed IRS Form 2751 to Virgil Moore on July 30, 2003. Virgil Moore acknowledged receiving notice by voluntarily signing the form and returning it to Officer Denning. And, as the Court already noted, the IRS’s delivery of the IRS Form 2751 notice to Moore complied with its own IRM procedures.

Moore has cited no legal authority for his proposition that IRS Form 2751 is not adequate notice under Section 6672(b), or his contention that IRS Letter 1153 is the required and only permissible means of accomplishing such notice. The jury has found that Moore voluntarily

signed the Form 2751. Therefore, the Court should find that the IRS gave Moore adequate notice of its intent to assess the trust fund recovery penalty against him, for the first quarter of 2003, when Revenue Officer Rebecca Denning delivered IRS Form 2751 to Moore on July 30, 2003.

Dated this 14<sup>th</sup> day of August, 2009.

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Certificate of Service

**IT IS HEREBY CERTIFIED** that service of the foregoing **UNITED STATES' POST-TRIAL BRIEF CONCERNING THE SUFFICIENCY OF IRS FORM 2751 NOTICE UNDER SECTION 6672(b)**, was made on August 14, 2009, upon the following through the Court's ECF system.

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